

## Exhibit “H”

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

WAYNE VAN SCOY,	)	
	)	
Plaintiff and	)	
Counterclaim-Defendant,	)	
	)	
v.	)	
	)	
VAN SCOY DIAMOND MINE OF	)	Case No. 05-108 (KAJ)
DELAWARE, INC., a Delaware corporation,	)	
KURT VAN SCOY, and DONNA VAN SCOY,	)	
	)	
Defendants and	)	
Counterclaim-Plaintiffs.	)	

**AFFIDAVIT IN SUPPORT OF DEFENDANTS VAN SCOY DIAMOND MINE OF  
DELAWARE, KURT VAN SCOY & DONNA VAN SCOY REPLY TO PLAINTIFF  
WAYNE VAN SCOY'S MOTION FOR SUMMARY JUDGMENT ON DEFENDANTS'  
LACHES, ACQUIESCENCE AND ESTOPPEL DEFENSES**

STATE OF DELAWARE :  
                              : SS.  
NEW CASTLE COUNTY:

**KURT VAN SCOY**, being duly sworn according to law, deposes and says as follows:

1. I am an officer of defendant corporation Van Scoy Diamond Mine of Delaware, Inc., a Delaware corporation that owns and operates a retail jewelry store in Newark, Delaware. I am also an individually named defendant and husband to defendant Donna Van Scoy.

2. Plaintiff Wayne Van Scoy is my brother.

3. My family has been involved in the jewelry business since the late 1960's or early 1970's. The business was started by my father Thomas Van Scoy, Sr. Since the institution of this lawsuit I have learned that my father's company, Van Scoy Diamond Mines, Inc. filed

applications in the United States Patent and Trademark Office to register the trademark "Van Scoy Diamond Mine" for use on or in connection with jewelry and in connection with jewelry sales. The registrations were issued to Van Scoy Diamond Mines, Inc. in 1980.

4. Over a number of years, Van Scoy Diamond Mines, Inc. operated and gave consents (in the case of members of our family, namely certain of my brothers and sisters), and granted licenses and franchises to third parties, to operate jewelry stores under the mark "Van Scoy Diamond Mine", with approximately 40 stores operating under that name by the mid 1980s, including a store in Newark, Delaware.

5. In the early 1990s business slowed and many of the Van Scoy Diamond Mine businesses closed. By September 1994, Van Scoy Diamond Mines, Inc. was only operating the original store in Wilkes-Barre, PA.

6. In the summer of 1994 I approached my father, Thomas Van Scoy, Sr., with the idea of re-opening the store in Newark, Delaware, which had been closed for some time, with the store once it reopened belonging to me. This approach was consistent with other stores my father had allowed to open that belonged to and were operated by my siblings. My father was pleased with this idea and enthusiastically encouraged me to prepare to reopen the store. He told me that I could operate the store as a "Van Scoy Diamond Mine", that while he would help me as he could, I would be pretty much on my own in opening and operating the store, and that whatever I made from running the store would belong to me. He made it clear from the outset that I would not owe him or Van Scoy Diamond Mines, Inc. anything for use of the name "Van Scoy

Diamond Mine” and that I had, as a gift, the perpetual consent to use the mark “Van Scoy Diamond Mine”. Once I had my father’s blessing of my idea to reopen the Newark store, I set out in late July of 1994 with my fiancée Donna looking for bank financing to provide the working capital needed to open my store in Newark.

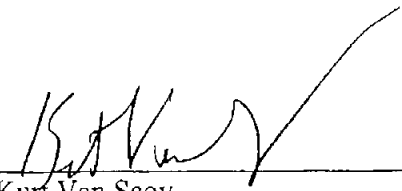
7. On October 21, 1994, my then fiancée (now my wife) and I incorporated Van Scoy Diamond Mine of Delaware, Inc.

8. In November 1994, with my father’s encouragement and help in moving certain equipment from Wilkes-Barre to Newark, I re-opened the Van Scoy Diamond Mine store in the Newark. My father gave me a sign reading “Diamond Mine”, and helped me transport that sign from a warehouse in Wilkes-Barre to the Newark, Delaware store location and mount it under another sign already in place that read “Van Scoy,” so that my store exterior signage displayed to the public said “Van Scoy Diamond Mine”. That signage remains in place today.

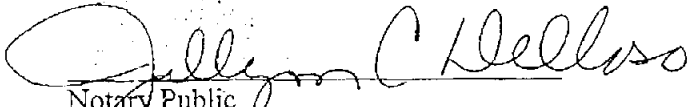
9. Plaintiff Wayne Van Scoy knew in October, 1994 that I was re-opening the Van Scoy Diamond Mine store in Newark, Delaware, and observed my father and I loading a safe on to a truck to transport it from the Wilkes-Barre store to my Newark, Delaware store location.

10. On July 12, 2002, Defendant Van Scoy Diamond Mine of Delaware, Inc. established a website.

11. I first became aware of Plaintiff Wayne Van Scoy's alleged ownership of the trademark "Van Scoy Diamond Mine" on or about November 18, 2004, when I received a cease and desist letter from my brother Wayne. Prior to that I was unaware of any federal registration of the mark "Van Scoy Diamond Mine".

  
Kurt Van Scoy

Sworn to and subscribed before me  
this 5<sup>th</sup> of December 2005.

  
Notary Public

My Commission Expires: 10/26/06